

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 186 of 1981

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF BHANJI HANSRAJ

Versus

PARSOTTAM @ BABULAL HANSRAJ THRO' HIS HEIRS

Appearance:

MR SURESH M SHAH for Appellants

MR PV HATHI for Respondents

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/10/2000

ORAL JUDGEMENT

This appeal arises of the judgment and order dated 31st January, 1981 passed by the learned Extra-Assistant Judge, Jamnagar in Regular Civil Appeal No. 164 of 1979 arising of the judgment and order dated

30th November, 1979 passed by the Joint Civil Judge (JD), Jamnagar in Regular Civil Suit No. 201 of 1973. The appellant before this Court is the plaintiff in the suit. Pending this appeal, the appellant has passed away and his heirs and legal representatives have been brought on the records of the matter. The defendants are the heirs and legal representatives of one Parshottam @ Babulal Hansraj.

The plaintiff and the said Babulal Hansraj were the real brothers. The said Parshottambhai @ Babulal Hansraj had filed a Regular Civil Suit No. 8 of 1962 against the plaintiff Bhanji Hansraj in the court of Civil Judge (SD), Jamnagar for partition of the joint family property and for rendition of accounts. One of the properties which was the subject matter of the said suit was a property in the possession of said Parshottam Hansraj in which said Parshottam Hansraj was running a restaurant in the name of 'Ramakant Hotel' under the licence standing in the name of said Parshottam Hansraj. By judgment and preliminary decree passed on 26th March, 1963, the said suit was allowed. The properties mentioned in the order were ordered to be partitioned and a Commissioner was appointed to take the accounts in respect of the business of Ramakant Hotel and one Kirana shop. The said preliminary decree was challenged by the plaintiff herein before this Court in an appeal which was dismissed on 20th February, 1970. After preliminary decree was confirmed by this Court, as aforesaid, report was submitted by the Court Commissioner on 13th July, 1972. As against the Kirana shop and the business of Ramakant Hotel, the Commissioner submitted that neither of the parties had submitted the accounts of the business, hence, it was not possible to ascertain and fix the income of both the said businesses. Pursuant to the said report and after considering the objections lodged by both the parties, the learned Civil Judge (SD) Jamnagar by his order dated 30th August, 1972 [Exh. 34] passed a final decree as regards the business of Ramakant Hotel. The Court observed that, 'in this respect the Commissioner's report is very clear and it appears therefrom that none of the parties had submitted satisfactory accounts to enable the Commissioner to come to any definite conclusion. Under the circumstances, nothing remains to be ordered in respect of these accounts as nothing is found to be due from one side to the other. This disposes of para-18 of the said judgement for the preliminary decree'. It also appears that the above referred final decree has been fully satisfied.

Thereafter, the defendant in the said suit ie., the plaintiff herein instituted the above referred Regular Civil Suit No. 201 of 1973 for partition and for rendition of accounts of the business of Ramakant Hotel. It is also alleged that the defendants had started the business of rickshaw and a garage out of the income of the aforesaid Ramakant Hotel. It was alleged that on partition of the joint family properties, the parties had become tenants in common in the said hotel. He also prayed for his share in the aforesaid businesses of rickshaw and the garage. The learned trial Judge held that the suit was barred by the principles of res judicata, and accordingly, dismissed the same. Feeling aggrieved, the plaintiff preferred Civil Regular Appeal No. 164 of 1979 which too has been dismissed by the learned Extra Assistant Judge, Jamnagar, as referred to hereinabove. Feeling aggrieved, the plaintiff has preferred the present appeal.

It is indisputable that the business of Ramakant Hotel was one of the subject matters in the earlier suit ie., Regular Civil Suit No. 8 of 1962 and that a preliminary decree was passed for taking of accounts of the said business of Ramakant Hotel. The said hotel was being managed by both the brothers in turn for sometime. Both the brothers were supposed to render accounts for the period during which they were in management of the said hotel, however, neither of them submitted the accounts before the Commissioner either of the said hotel or of the Kirana shop which was being run and managed by the plaintiff herein. Consequently, no order was made in respect of the said hotel and the Kirana shop. The Court, while passing the final decree, held that, 'in respect of Kirana shop and the said hotel, neither of the parties was required to pay anything to the other party' i.e., the accounts were finally held to have been settled in respect of those two businesses namely the Kirana shop and the Ramakant Hotel. The respective business has come to the share of the brother who was managing the same ie., the business of Ramakant Hotel came in the share of the defendant and that of Kirana Shop came in share of the plaintiff. In my view, both the Courts below have rightly held that the suit for partition of the said Ramakant Hotel and rendition of accounts was barred by the principles of res judicata. Besides, though both the courts below have held the suit to be barred by principles of res judicata have also answered the other issues ie., whether the parties were tenants in common [as alleged by the plaintiff] and the same has been answered in negative. As regards the business of rickshaw and garage, the plaintiff has failed to prove

that such business was established or was being run by the defendants or that such business was established from the income of Ramakant hotel.

In view of the above finding recorded by the courts below, I see no substance in this appeal. Appeal fails and the same is dismissed with costs.

Prakash*